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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Part 90 of the)
Commission's Rules to Eliminate)
Separate Licensing of End Users)
of Specialized Mobile Radio Systems)

PR Docket No. 92-79

To: The Commission

**COMMENTS
OF
THE NATIONAL ASSOCIATION OF
BUSINESS AND EDUCATIONAL RADIO, INC.**

The National Association of Business and Educational Radio, Inc. ("NABER"), through counsel and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. §1.415, hereby respectfully submits its Comments in response to the Notice of Proposed Rule Making ("NPRM") issued by the Commission in the above-referenced proceeding.¹

I. BACKGROUND

NABER is a national, non-profit, trade association headquartered in Alexandria, Virginia, that represents the interests of manufacturers, vendors and service providers as well as large and small businesses that use land mobile radio communications as an important adjunct to the operation of their businesses and that hold thousands of licenses in the private land mobile radio services. NABER has five membership sections representing Users, Private Carrier Paging licensees, Radio

¹57 FR 20070 (May 11, 1992).

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Dealers, Technicians and Specialized Mobile Radio operators. NABER'S comprises over 6,000 of these businesses and service providers holding thousands of licenses in the private land mobile services.

For the past 19 years, NABER has been the recognized frequency coordinator in the 450-470 MHz and 470-512 MHz bands for the Business Radio Service. NABER is also the Commission's recognized frequency coordinator for the 800 MHz and 900 MHz Business Pools, 800 MHz "old" conventional channels for Business eligibles and conventional SMR Systems, and for the 929 MHz paging frequencies. In its Report and Order in PR Docket No. 83-737, the Commission designated NABER as the frequency coordinator for all Business Radio Service frequencies below 450 MHz and, in a joint effort with the International Municipal Signal Association ("IMSA") and the International Association of Fire Chiefs ("IAFC"), the Special Emergency Radio Service frequencies.

In this proceeding, the Commission has proposed to eliminate the requirement that end users of SMR Systems be individually licensed. Instead, when SMR operators file applications for initial renewal of their systems or to increase the number of channels on the system, the operator will be required to provide a copy of appropriate business records to the Commission demonstrating that there is sufficient loading on the system for the past six (6) months.² The loading count would then be averaged

²The Commission has requested comments on the type of business records which would be appropriate for the loading demonstration.

over the six (6) month period to determine the number of units to be credited to the system.³

II. COMMENTS

NABER has long supported the Commission's efforts to make the licensing process more efficient and less costly for applicants. However, NABER believes that any mechanism adopted by the Commission as an alternative to the current process must also provide the same (or greater) ability by the Commission to accurately determine spectrum utilization and compliance with the Commission's rules regarding loading and construction.

In the past, the various concepts which have been proposed to the Commission have each failed to accomplish the twin goals of licensing efficiency and data base accuracy. As a result, NABER has not supported the Commission's previous proposals. However, the Commission's proposal as outlined in the current NPRM has significant merit and, in NABER's view, presents the framework for a viable alternative to the current licensing process.

NABER supports the Commission's proposal to eliminate SMR end user licensing. SMR operator responsibility for ensuring user compliance with the various Commission's rules relating to FAA, NEPA, eligibility compliance, etc. is similar to current responsibilities of other private carrier licensees which do not license end users. The elimination of 40,000 routine applications

³For conventional SMR Systems, the Commission will require SMR operators to modify the backbone SMR license when loading on the system changes, in order to provide current information as to whether the system is entitled to channel exclusivity.

from the Commission's workload each year should result in increased speed of service for other private land mobile applications which are received by the Commission's processing office in Gettysburg, Pennsylvania.

The Commission's proposal is also timely, as the elimination of loading requirements for trunked SMR systems licensed after May of 1993 means that newly granted systems which are not required to meet a loading test will not be required to license users needlessly.

The Commission has requested comments on the various types of information which could be supplied by a licensee to demonstrate mobile loading. Two of the types of records listed by the Commission in paragraph 9 of the NPRM, customer invoices and service agreements, would be an appropriate means to ascertain mobile loading on a system. However, NABER is concerned that each type of record includes the specific financial arrangements between the customer and the operator. Since the Commission has not proposed to keep such lists confidential, it is possible that the lists and information contained therein could be used in an anticompetitive manner by other operators. Therefore, NABER suggests that the Commission consider accepting "modified" lists, where the financial arrangements have been deleted.

NABER does not support the Commission's proposed paragraph 9 of the NPRM to average the mobile loading over a six month time period. Although loading on an SMR System does vary week by week, the Commission policy over the years has been to take a "snapshot"

of the loading on the applicable date. Averaging the mobile loading over a six month period will mean that operators will be required to tolerate extremely loaded systems over a significant period of time to allow the system's average to increase, while other spectrum may lie fallow in the area.⁴

NABER supports the "snapshot" method of determining system loading. The difficulty of this method is that operators may "swarm" mobiles from one system to another in order to meet loading requirements or add channels. Therefore, NABER would support continuation of the Commission's current policy (as contained in FCC Form 800-A) of asking licensee's whether any of the mobile units have been counted for loading purposes on another system within the past year. This reduces the ability to "swarm" mobiles and should not penalize licensees which have achieved the necessary loading benchmarks but have reached those levels just prior to the loading date.⁵

Finally, NABER is concerned as to the proposal contained in the Petition for Rule Making filed by the American Mobile Telecommunications Association on March 9, 1992 (and incorporated by the Commission in this proceeding) to permit system operators to count mobile units for loading purposes on every system for

⁴This averaging would be a significant hardship on conventional licensees, which would be unable to convert their systems to trunked operation for six months after the system loading reaches 70 units.

⁵Operators should be given credit for mobile units which the operator can demonstrate has been genuinely moved from other systems.


which the unit is programmed. Although this recognizes the maturing level attained by the SMR industry, such a rule may allow for some degree of abuse as to determining "real" channel loading on a system. The proposal favors operators of multiple systems, which can merely program the mobile units on as many systems as will fit into the radio programmer, regardless of whether the mobile unit will ever actually access the system, and count the unit on numerous systems.

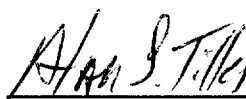

III. CONCLUSION

WHEREFORE, the National Association of Business and Educational Radio, Inc. respectfully requests that the Commission act in accordance with the views expressed herein.

Respectfully submitted,

**NATIONAL ASSOCIATION FOR BUSINESS
AND EDUCATIONAL RADIO, INC.**

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Date: June 11, 1992